

# The Chippewa Cree Tribe of the Rocky Boy's Reservation

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31 Agency Square  
Box Elder, Montana 59521

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure by Improving Wireless	)	
Facilities Siting Policies;	)	
Mobilitie, LLC Petition for	)	
Declaratory Ruling	)	

COMMENTS OF THE CHIPPEWA CREE TRIBE

April 7, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, D.C., 20554  
Via: ECFS

Dear Ms. Dortch,

**RE: WT Docket No. 16-421 WTB Seeks Comment public input on potential Commission actions to help expedite the deployment next generation wireless infrastructure by providing guidance on how federal law applies to local government review of wireless facility siting applications and local requirements for gaining access to rights of way.**

Thank you for the opportunity to submit comments on the Public Notice<sup>1</sup> released by the Wireless Telecommunications Bureau of the Federal Communications Commission (“Commission”) to potential actions to expedite the deployment of small cell infrastructure facilities siting policies.

The Chippewa Cree Tribe of the Rocky Boy’s Indian Reservation (CCT) has reviewed and considered the implications of and potential Commission actions to help expedite the deployment small cell and distributed antenna systems (DAS) for 5G wireless services by issuing a public comment and offers these comments.

#### **BACKGROUND of the CHIPPEWA CREE TRIBE**

The Chippewa Cree Tribe, like many federally recognized tribes, has a documented

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<sup>1</sup> FCC publishes a Public Notice, “Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC, Petition for Declaratory Ruling,” WT Docket No. 16-421.

history of traditional use and occupation across lands that today fall within multiple states. Colonial expansion and population growth in the eastern woodlands resulted in migration of the Chippewa or Ojibwa westward, in search of a secure location in which to raise their families and provide for their people. Oral history states that a prophecy followed by the grandfather of the modern reservation's namesake, Rocky Boy, directed the leaders of the ancestral band of Ojibwa to travel to the "backbone of the earth" to seek survival. This term is recognized as a traditional name for the Rocky Mountain range, synonyms of which are used not only by other Algonquian-speaking groups such as the Cree and Blackfoot, but also Salishan and Kootenai-speaking groups native to the region. Travel to this area from ancestral homelands in present-day Pennsylvania occurred over several generations, and resulted in settlement with Cree bands that also resided traditionally in the area. The combined Chippewa Cree Tribal Reservation is now one of seven American Indian reservations in the present-day State of Montana.

In order to address the historic preservation needs of the reservation community on both on- and off-reservation federal trust lands in addition to ancestral homelands across the federally-recognized historical range of the tribe, the Chippewa Cree Tribal Business Committee as the governing body of the Tribe established the Chippewa Cree Cultural Resources Preservation Department (CCCRPD) by resolution. CCCRPD houses the Tribal Historic Preservation Officer (THPO) in addition to an Archaeology Department and Section 106 Compliance review staff.

CCCRPD has established a strong reputation within the national THPO community and amongst federal agencies as an effective and innovative program. Not only does the CCCRPD meet the high-level of demand placed on the THPO and tribal cultural resource programs to engage in federal consultation, but has exceeded expectations and risen to the standard of many industry partners by developing and utilizing an online consultation management database.

The Chippewa Cree Tribe works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA) [ and the Native American Graves Protection and Repatriation Act (NAGPRA) and any others – ARPA, NEPA]. Our tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Over the past 13 years, we have worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including macro cell tower siting, through the TCNS Program. Our tribe provides prompt response to cell tower notifications. If and when any situations arise using the TCNS Program, tribes have

been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G wireless technology by the wireless telecommunications industry we support the modernizing of the existing TCNS system to meet our needs. Though technically not a local government for the purposes of this notice, Indian tribes face many of the same challenges that have described in the DA 16-1427 and which the telecommunications industry has mentioned as a concern to their interests.

Through the iResponse processing services website, the CCCRPD has responded to over 8,150 projects online since April 2014. Of these, 8,074 originated through the TCNS established to ensure telecommunications projects overseen by the FCC complied with Section 106 of the NHPA. The use of this service has allowed the CCCRPD to respond to consultation requests in a timely manner, facilitating the expedient deployment of new telecommunications systems. Within this process, the CCCRPD also provides transparency and accountability for tribal monitoring work by creating deliverables for industry representatives. With the evolution of spectrum and new small cell deployment, the Chippewa Cree Tribe concurs with the review and asks for FCC guidance on what constitutes a reasonable amount of time for a review. This work is directly related to the vision of the CCCRPD to identify, preserve, protect, and interpret cultural historic resources that are integral to the existence of the Tribe in order to pass this knowledge to future generations.

## **COMMENTS**

The Section 106 of NHPA<sup>2</sup> requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment. Section 101 (d) (6) of the NHPA provides that federal agencies “shall consult with any Indian Tribe or Native Hawaiian organization” that attaches religious and cultural significance to properties of traditional religious and cultural importance that may be determined to be eligible for inclusion in the National Register and that might be affected by a federal undertaking (16 U.S.C. 470a(d)(6)). Under the National Programmatic Agreement<sup>3</sup> the Chippewa Cree Tribe should be consulted on any potential changes to 106 permitting process.

We strongly disagree with CTIA's comments<sup>4</sup> that the deployment of small cell does not constitute a major federal undertaking. Small cell deployments are federal undertakings and the FCC should not exempt them from the procedures to access those impacts. The infrastructure required for a small cell network varies from equipment to the size of a large shoebox attached to existing utility poles to new, 120-foot poles.<sup>5</sup> The “one-size-fits-all” permitting approach that deprives Tribes of 106 oversight.<sup>6</sup> In the comment “...that the deployment of small cells is neither a “major federal action” under the National Environmental Policy Act (‘NEPA’) nor a “federal undertaking” under the National Historic Preservation Act (‘NHPA’) is false

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<sup>2</sup> 54 U.S.C. §§ 300101 et. seq.

<sup>3</sup> Bloomberg Law, “Small Cell Fight Carries big Stakes for Sprint and AT&T”, Lydia Beyoud, April 4, 2017.

<sup>4</sup> “*Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Comments CTIA*”, Public Notice, WT Docket No. 16-421, page 47-48.

<sup>5</sup> Bloomberg Article

<sup>6</sup> id.

in that all changes to the environment, no matter the size, requires appropriate consideration of all resources, be it in an already built environment, or a non-disturbed environment. A 'federal undertaking' as defined in the 'NHPA'<sup>7</sup> does not differentiate between what is being referred to as a 'major' or a 'minor' undertaking. The general public will be affected by the deployment of these 'small cells' and thus, the proper protocols must be taken to ensure that all parties involved adhere to the regulations already in place.

## **TECHNOLOGY AND LEGAL DEVELOPMENTS AFFECTING WIRELESS INFRASTRUCTURE DEPLOYMENT**

The Chippewa Cree Tribe has several questions about the 5G deployments and would like the Commission to consider the Tribe's concerns about the impact on the current TCNS process for the Section 106 reviews and to invoke its convening authority under the NPA to hold a forum with Tribal Historic Preservation Officers, the Council, the Telecommunications Work Group, industry trade associations and company representatives ( 36 C.F.R. 800.14(b)) to consult and discuss, and seek input improving the Section 106 compliance and to develop recommendations and methods of streamlining the Section 106 reviews, and to explain and describe the impact of the 5G wireless technology deployments. Chippewa Cree Tribe has received company requests to address the current review process and changes for the small cell installations. (Exhibit A) To date, the Tribe has not been adequately

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<sup>7</sup> 42 CFR 137.289

consulted which has resulted in confusion because to the lack of the industry knowledge to understand the equipment installations. In recent meetings with the CTIA and company representatives have stated the description of the size of the certain equipment has been termed as the size of a “pizza box”. It isn’t helpful to fully understand the 5G wireless deployment without an industry or FCC presentation or information handouts, webinar, or an invitation to a industry forum etc. What requirements are needed to upgrade the TCNS Section 106 review process currently for macro cell towers, specifically as it relates to 1) the modernization and upgrades for the FCC’s Section online application process system for 5G application submissions, 2) Revisions to the Forms 620 and 621, 3) use of the Positive Train Control (PTC) Batching method for DAS and Small Cell Deployments, 4) Definitions of DAS and Small Cell Infrastructure and all types of equipment, 5) Proposed amendments for exclusions, 6) the definition of a federal undertakings for Section 106 reviews for 5G wireless deployments, 7) Tribal agreement framework for uniformity, and 8) Other considerations for collocations on aging infrastructure, and replacements of structures that may have ground disturbances that could potentially cause an adverse effect, placement of DAS and small cell deployments in undisturbed lands in urban areas.

The Chippewa Cree Tribe are not mere stakeholders or concerned members of the public in the common sense, but sovereign political entities who have established federally-recognized areas of interest and hold legal responsibility to consult and respond to project notices in a government-to-government process.



## SUMMARY

The FCC has demonstrated during its interactions with the Chippewa Cree Tribe its respect for and commitment to uphold the principles of tribal sovereignty, self-determination, and self-government, as mandated by the November 6, 2000 Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). The NPA provides for appropriate public notification and participation with the Section 106 process and consultation with Indian Tribes. Through the NPA and Executive Order the Section 106 process has allowed Indian Tribes to be consulted on proposed project sites that are occurring on tribal or aboriginal homelands. The Chippewa Cree Tribe looks forward to future tribal consultations with the FCC under the successful model of government-to-government relationships, and therefore asks for careful consideration of the changes in the deployment of DAS and small cells infrastructure that is in conflict with the existing Nationwide Programmatic Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Baker', with a stylized flourish at the end.

Harlan Baker  
Chairman, Chippewa Cree Tribe

CC: Bambi Kraus, President, National Association of Tribal Historic Preservation Officers

**Exhibit A**

-----Original Message-----

From: Michael Graf <michael.graf@eca-usa.com>  
To: "alvin@nei-yahw.com" <alvin@nei-yahw.com>  
Date: Thu, 23 Mar 2017 20:39:01 +0000  
Subject: FIELD"TCNSNumber" (9INB001395)

RE: Mobilitie, LLC ("Mobilitie") Small Cell Installation

TCNS Notification ID # 145095  
Mobilitie ID: 9INB001395

Dear Sir or Madam,

Mobilitie is in receipt of a request from Chippewa Cree Tribe of the Rocky Boys Reservation for background documentation and payment to facilitate Chippewa Cree Tribe of the Rocky Boys Reservation review of a proposed small cell pole installation. The request originated from a submittal to the Tower Construction Notification System ("TCNS") for a location in Lake County, IN. Mobilitie is a wireless infrastructure company that is deploying innovative technology, called small cells, in large volumes throughout the country to enhance the networks of wireless carriers. As such, Mobilitie is reaching out directly to Chippewa Cree Tribe of the Rocky Boys Reservation to discuss the nature of the company and the installations that are being proposed in the hopes of reducing the impact that this large volume of submittals will have on both parties.

Mobilitie possesses a Certificate of Territorial Authority granted by the Indiana Utility Regulatory Commission that allows Mobilitie to deploy small cell poles in the local rights of way of communities that need additional coverage and connectivity. These small cell facilities densify networks to address increasing data demands by providing coverage redundancy and increasing capacity to targeted areas where service needs improvement.

TCNS has historically been used for the installation of "macro" or large cell tower sites that require substantial ground disruption and can have a considerable impact on the aesthetics of a location. In contrast, Mobilitie small cell facilities require a circular piece of ground space that is two-and-a-half-feet (2.5') in diameter, and the Mobilitie poles are designed to blend in with existing infrastructure. Mobilitie's construction technique for small cell poles requires only a small cavity equal to the size of the pole to be disturbed during the construction process. This is due to the fact that the Mobilitie equipment required to operate the antenna on a small cell pole is attached to the pole itself, while macro cell tower sites require additional platforms or shelters to be built to accommodate this equipment. Also, these small cell poles operate utilizing microwave backhaul, which alleviates the need for trenching for fiber to the location to allow the cell equipment to communicate with the carrier's network. The result of these attributes of small cells is that the area required for a small cell pole is 5% or less than the area typically impacted by a macro cell tower.

In addition, Mobilitie's Certificate of Territorial Authority allows Mobilitie to place these smaller, less obtrusive installations in the right of way. The Mobilitie targeted rights of way run along main thoroughfares and connect the areas where people travel most and thus require a strong, continuous network signal. These rights of way are located on ground that has been utilized by other certificated utilities that have installed poles and run facilities through this ground space, including water, sewer, gas, electricity, and telecommunications, and these previous uses decrease the likelihood that a location of historical significance would be discovered during a small cell installation.

Given the above referenced differences between small cells and macro cell site towers, Mobilitie would like to partner with Chippewa Cree Tribe of the Rocky Boys Reservation to discuss how to tailor the appropriately rigorous macro cell site tower tribal review requirements to the more refined small cell pole installation. Mobilitie suggests a consolidated review that would consist of a bundling of the documentation and fees associated with these installations to address multiple locations at one time with a reduced fee structure. Any agreements Mobilitie reaches with Chippewa Cree Tribe of the Rocky Boys Reservation are subject to any modifications to the National Programmatic Agreement, FCC rules, federal law, or FCC guidance on fees.

Mobilitie intends to comply with federal law, including the National Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, and firmly believes that the nature of small cell installations requires additional partnership between wireless infrastructure companies and Chippewa Cree Tribe of the Rocky Boys Reservation, and other Tribes and NHOs. Such partnerships will ensure that the deployment of this advanced technology occurs quickly and cost effectively to aid consumers as they continue to rely more heavily on uninterrupted connectivity, while still respecting Tribal history and protecting sites eligible under Section 106.

Enclosed please find the following items to aid Chippewa Cree Tribe of the Rocky Boys Reservation in its review of the Mobilitie small cell pole installations:

1. Photos of small cell poles and the installation technique
2. Aerial photographs of the location of the proposed small cell pole location
3. Payment requested for the TCNS ID referenced above

Mobilitie acknowledges that this initial review may require additional time and resources as Chippewa Cree Tribe of the Rocky Boys Reservation familiarizes itself with the small cell pole installations. As stated above, Mobilitie would like to bundle these fees for multiple reviews in the future.

Please contact our vendor, Environmental Corporation of America, at your earliest convenience to discuss how best to move forward with this partnership. If you would like to speak directly with Mobilitie, please contact our team at [TribalRelations@mobilitie.com](mailto:TribalRelations@mobilitie.com). We look forward to working with you.

Respectfully Submitted,

Dina M. Bazzill

Environmental Corporation of America (ECA), on behalf of Mobilitie

1375 Union Hill Industrial Court

Alpharetta GA 30004

770-667-2040 x.111

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April 7, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C., 20554  
Via: ECFS

Dear Ms. Dortch,

**RE: WT Docket No. 16-421 Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies: Mobilitie, LLC Petition for Declaratory Ruling**

In response to Docket 16-421, the Eastern Shoshone Tribe has reviewed and considered the implications of and potential Commission actions to help expedite the deployment small cell and distributed antenna systems (DAS) for 5G services by issuing a declaratory ruling and offers these comments.

The Eastern Shoshone Tribe, like many federally-recognized tribes, has a documented history of traditional use and occupation across a large area of land, which today falls within multiple states. The Eastern Shoshone have a long and storied history throughout North Dakota, South Dakota, Nebraska, Kansas, Colorado, Wyoming, Idaho, Washington, Oregon, California, Utah, Nevada, Arizona, New Mexico, and Texas. That history includes major sacred events, encampments, the gathering of medicinal plants and other significant activities that indicated our footprint throughout this entire region. The Eastern Shoshone Tribe, now living on the Wind River Reservation in Wyoming, has been living, some say, in the Wind River mountain range and its environs for some 12,000 years.

In order to address the historic preservation needs of the reservation community on both on- and off-reservation federal trust lands in addition to ancestral homelands across the federally recognized historical range of the tribe, the Eastern Shoshone Tribe has contracted with the Chippewa Cree iResponse, LLC. This department houses the Tribal Historic Preservation Office (THPO) in addition to an Archaeology Department and Section 106 Compliance review staff. The Chippewa Cree CRPD has established a strong reputation within the national THPO community and amongst federal agencies as an effective and innovative program. Not only does the CRPD meet the high-level of demand placed on THPO and tribal cultural resource programs to engage in federal consultation, but has exceeded expectations and risen to the standard of many industry partners by developing and utilizing an online consultation management database.

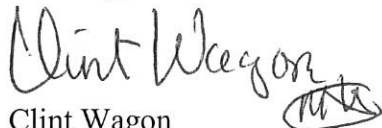
Through the Tribal 106 processing services website, iResponse has responded to over 5,753 projects online since 2015. Of these, 5,753 originated through the Tower Construction Notification System (TCNS) established to ensure telecommunications projects overseen by the FCC complied with Section

106 of the National Historic Preservation Act. The use of this service has allowed the Eastern Shoshone to respond to consultation requests in a timely manner, facilitating the expedient deployment of new telecommunications systems. Within this process, the iResponse also provides transparency and accountability for Eastern Shoshone tribal monitoring work by creating deliverables for industry representatives. This work is directly related to the vision of iResponse to identify, preserve, protect, and interpret cultural historic resources that are integral to the existence of the Tribe in order to pass this knowledge to future generations.

The Eastern Shoshone Tribe is in agreement with the Chippewa Cree Tribe on the opposition of CTIA's comments that the deployment of small cell does not constitute a major federal undertaking. The potential changes to the process would harm the work of the Eastern Shoshone Tribe to identify cultural resources that are significant to the Tribe.

The Eastern Shoshone Tribe support the comments submitted by the Chippewa Cree Tribe on the issue of of WT Docket No. 16-421. The Tribe respectfully requests that the FCC carefully consider the tribes before any action is taken in response to the Section 106. The FCC has demonstrated during its interactions with the Eastern Shoshone Tribe its respect for and commitment to uphold the principles of tribal sovereignty, self-determination, and self-government, as mandated by the November 6, 2000 Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). The Eastern Shoshone Tribe looks forward to future interactions with the FCC under the successful model of government-to-government relationships, and therefore asks for careful consideration in the matter at hand.

Sincerely,

A handwritten signature in dark ink that reads "Clint Wagon". The signature is fluid and cursive, with a small circular mark at the end.

Clint Wagon  
Chairman, Eastern Shoshone Tribe